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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD ROBERT HAWKS,

Defendant and Appellant.

A153882

(Contra Costa County
Super. Ct. No. 51713882)

After being involved in a violent incident with his mother, defendant Richard Hawks was convicted by a jury of felony counts of false imprisonment of an elder, elder abuse likely to cause great bodily injury, and use of force to resist an executive officer. On appeal, he claims the first two convictions must be reduced to misdemeanors because there is insufficient evidence that he either (1) used violence or menace to effect the false imprisonment or (2) abused his mother under conditions likely to cause great bodily harm. We affirm.

I.
FACTUAL AND PROCEDURAL
BACKGROUND

In July 2017, 50-year-old Hawks lived in El Cerrito with his mother, who was in her mid-seventies, and his father, who was in his early eighties. A neighbor testified that on July 9, she was unloading groceries when she heard yelling from the Hawks house. Although it was normal for her to hear Hawks “yelling randomly to himself,” she became

concerned when she heard his mother yelling as well. The neighbor called 911 after she “heard [Hawks] say very clearly, ‘Do you want to get hurt?’ ”

Five El Cerrito police officers soon arrived at the Hawks residence. The police considered a heightened response appropriate because they had been called to the house a few months earlier due to a fight between Hawks and his father, after which guns were seized and Hawks was detained for a psychiatric evaluation under Welfare and Institutions Code section 5150.¹

Hawks’s mother, who was five feet, three inches tall and about 130 pounds at the time, answered the door for the police. Due to an old accident, she had nerve damage and limited mobility in her lower body, and she had also had surgery on both arms. She appeared “emotional, distraught,” and “scared,” but before the officers could question her, Hawks, who was about six feet tall and over 200 pounds, intervened and became “very abrasive and . . . confrontational.” Hawks’s mother came outside at the officers’ request, and after briefly talking to her they decided to arrest him.

As three police officers moved inside, Hawks ran upstairs. One of the officers grabbed him, and Hawks turned and kicked him. Another officer deployed his taser against Hawks, hitting him in the chest, and Hawks ripped the wires from the taser prongs. Hawks kept struggling while on the ground, but the officers were eventually able to restrain and arrest him.

After the arrest, one of the police officers interviewed Hawks’s mother, and a recording of her statement was played for the jury. She told the officer that Hawks had become angry when she told him to move his telephone from the kitchen so it would not get wet. He began yelling at her and pushed her, cornering her in the kitchen. She told him to “stop barking like a dog” and threatened to call the police, at which point he told her, “I’m going to shut your mouth.” He then broke a piece of cardboard off of a box nearby and tried to stuff it in her mouth. She indicated that his hands were pushing against her neck and face, pinning her down, and he was “grabbing so hard” onto her

¹ The jury acquitted Hawks of a count of misdemeanor elder abuse charged as a result of this earlier incident.

forearm while his elbow was “digging into her right breast.” She estimated that he held her down for “five to ten minutes,” during which she repeatedly told him to get off her and tried to bite his hand. Eventually, Hawks let her go and left the room.

After Hawks’s mother gave her statement, another police officer took photographs of her injuries. This officer testified that Hawks’s mother said “she was in pain” and indicated that her forearms and chest hurt. Hawks’s mother had trouble rolling up her sleeves because her forearms were sore, and the officer described her arms as being “saturated with bruises,” including a distinct thumbprint. The officer also observed bruising near Hawks’s mother’s upper breast and on her biceps. Hawks’s mother said that her son caused these injuries.

The testimony Hawks’s mother gave at trial was consistent in many respects with her statement to police, except that she said Hawks held her down less than a minute, and she suggested she had “exaggerate[d]” when describing her level of pain. She also said she did not believe Hawks was “trying to hurt [her]” because despite his great strength, he had caused only “a teeny weeny bruise.”²

The jury convicted Hawks of false imprisonment of an elder, elder abuse likely to cause great bodily injury, and use of force to resist an executive officer.³ The trial court placed him on probation, reporting to Behavioral Health Court, on the condition that he serve 364 days in jail.

² There is some indication in the record that Hawks’s mother downplayed the incident in part because of Hawks’s father, who returned home as Hawks’s mother finished giving her statement to the police. One of the police officers testified that Hawks’s father was “hostile toward the officers,” tried to talk over his wife and “control the officers’ actions,” and ordered the officers to leave.

³ The convictions were under Penal Code sections 69 (use of force to resist executive officer) and 368, subdivisions (b)(1) (elder abuse likely to produce great bodily harm) and (f) (false imprisonment of elder). All further statutory references are to the Penal Code.

II. DISCUSSION

A. *Standard of Review.*

We apply the familiar substantial-evidence standard of review to analyze both of Hawks's claims. “ ‘We review the whole record to determine whether . . . [there is] substantial evidence to support the verdict . . . such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] ‘Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the . . . jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.’ ” (*People v. Manibusan* (2013) 58 Cal.4th 40, 87.)

B. *Sufficient Evidence Supports the False-imprisonment Conviction.*

Hawks contends that his conviction for false imprisonment must be reduced to a misdemeanor because there is insufficient evidence he used violence or menace to perpetrate the crime. “False imprisonment is the unlawful violation of the personal liberty of another.” (§ 236.) False imprisonment perpetrated against a person 65 years of age or older “by the use of violence . . . [or] menace” is a felony. (§ 368, subds. (f), (g); see § 237, subd. (b).) “ ‘ ‘Force is an element of both felony and misdemeanor false imprisonment,’ ” and the crime constitutes a felony based on the use of violence “ ‘ ‘only where the force used is greater than that reasonably necessary to effect the restraint.’ ” (*People v. Dominguez* (2010) 180 Cal.App.4th 1351, 1357.) “ ‘ ‘Menace [for false imprisonment] is a threat of harm express or implied by words or act.’ ” (*People v. Newman* (2015) 238 Cal.App.4th 103, 121.)

Hawks conclusorily asserts that he did not use any more force than was necessary to effect the restraint of his mother, or in his words to “confine [his mother] to an area of the kitchen.” We agree with the Attorney General, however, that there was substantial evidence Hawks used more force than was necessary merely to restrain his mother. His

hold was strong enough to inflict severe bruising, and he dug his elbow into her upper breast, causing pain.

Hawks also claims “there is no evidence that [he] used either a weapon or verbal threats to confine [his mother],” even though he both asked her whether she wanted to get hurt and told her he was going to shut her mouth. We find it hard to understand how these statements did not amount to verbal threats of harm. In any case, “[a]n express or implied threat of harm does not require the use of a deadly weapon or an express verbal threat to do additional harm,” and we conclude that Hawks’s statements and actions amounted at the very least to an implied threat of inflicting harm that constituted the use of menace to effect the false imprisonment. (*People v. Aispuro* (2007) 157 Cal.App.4th 1509, 1513.) Thus, there was substantial evidence that Hawks used both violence and menace to perpetrate the false imprisonment.

C. Sufficient Evidence Also Supports the Conviction for Elder Abuse Likely to Cause Great Bodily Harm.

Hawks claims his conviction for elder abuse must also be reduced to a misdemeanor, because there was insufficient evidence he acted in a way likely to produce great bodily injury. He was convicted under section 368, subdivision (b)(1), which makes it a felony for “[a] person who knows or reasonably should know that a person is an elder or dependent adult” to, “under circumstances or conditions likely to produce great bodily harm or death, willfully cause[] or permit[] any elder or dependent adult to suffer, or inflict[] thereon unjustifiable physical pain or mental suffering.”

Hawks premises his claim on distinctions between the facts here and those in *People v. Thiel* (2016) 5 Cal.App.5th 1201 (*Thiel*), in which the Fourth District Court of Appeal held that substantial evidence supported the finding that the defendant “inflicted ‘unjustifiable physical pain’ on [his 91-year-old aunt] under ‘circumstances or conditions likely to produce great bodily harm or death.’ ” (*Id.* at pp. 1204, 1217.) In that case, after smashing a framed picture, the defendant “forcefully grabbed [his aunt] by both wrists” and pulled her to the floor from the chair in which she had been sitting. (*Id.* at p. 1205.) There was evidence that the defendant then “ ‘forcefully’ picked [his aunt] up

from the floor, after she had fallen to one knee . . . ; that when [he] forcibly grabbed [her], he broke her wrist and ‘tore the skin on [her] arms,’ causing her substantial physical injury that required extensive medical treatment; and that [he] intentionally pushed [her] back into her chair about six times, . . . which caused [her] to fall.” (*Id.* at p. 1217.)

Hawks claims that in contrast to the *Thiel* defendant, he only “held his mother for a short, undetermined period of time and . . . her injuries consisted of bruises but did not include any broken bones or lasting injuries that required medical treatment.” But as the Attorney General correctly points out, “there is no requirement that the victim actually sustain great bodily injury, or any injury.” (Citing *People v. Clark* (2011) 201 Cal.App.4th 235, 245, fn. 6 (*Clark*).) *Clark*, which addressed the child-abuse statute that section 368 “is patterned on and virtually identical to,” identified factors a factfinder may consider in determining whether abuse was “inflicted under circumstances or conditions likely to produce great bodily injury.” (*Id.* at pp. 244-245 & fn. 5.) These “include, but are not limited to, (1) the characteristics of the victim and the defendant, (2) the characteristics of the location where the abuse took place, (3) the potential response or resistance by the victim to the abuse, (4) any injuries actually inflicted, (5) any pain sustained by the victim, and (6) the nature of and amount of force used by the defendant.” (*Id.* at p. 245, fn. omitted.) Thus, while the extent of a victim’s actual injuries is a relevant factor, the victim need not sustain any injury at all if other factors are present.

Viewing the evidence here in light of the *Clark* factors, we have no trouble concluding there was substantial evidence that Hawks attacked his mother under circumstances likely to produce great bodily injury. The evidence showed that his mother was physically disabled and of small stature, whereas he was physically large and strong enough that it took several police officers to subdue him. And although Hawks may not have inflicted lasting physical injuries on his mother, there was evidence that she experienced significant bruising and pain, particularly on her arms, to the point that she found it difficult to push up her sleeves. In addition, under these circumstances, the jury could have reasonably found that Hawks inflicted a level of force likely to make his mother fall which, given his mother’s physical limitations and relatively advanced age,

involved “an increased risk of bone fractures.” (*People v. Racy* (2007) 148 Cal.App.4th 1327, 1333 [affirming felony elder-abuse conviction where defendant’s chasing and pushing of 74-year-old victim could have caused victim to fall].) Substantial evidence supported this conviction as well.

III.
DISPOSITION

The judgment is affirmed.

Humes, P.J.

WE CONCUR:

Margulies, J.

Sanchez, J.